SINGAPORE REPORTS

SYED HUSSAIN ALKAFF & ORS. v. A.M. ABDULLAH SAHIB & CO.

[C.A. (Sinnathuray, Lai Kew Chai & Thean JJ.)
September 4, 1984]

[Singapore – Civil Appeal No. 70 of 1983]

Landlord and Tenant – Rent-controlled premises – Tenancy agreement – Termination of tenancy – Whether trespasser or tenant – Vacant possession – Injunction – Damages – Consent judgment – Whether estoppel applicable – Control of Rent Act (Cap. 266), s.14 – Land Acquisition Act (Cap. 272), ss. 8 & 16.

The appellants are the trustees of the 1898 Alkaff Settlement and were the owners of certain premises in Singapore. In 1978 they initiated proceedings in the District Court and claimed, *inter alia*, that the tenancy of the premises had been duly determined and that the respondents were occupying the premises as trespassers. The appellants claimed possession thereof. The respondents pleaded that they were lawful tenants and invoked the protection of the Control of Rent Act. Subsequently, by consent, judgment was entered against the respondents in 1979 on certain terms, including delivery of possession of the premises by the respondents to the appellants and a stay of execution until certain events occurring. One such event was the compulsory acquisition of the premises by government. The respondents remained in possession by virtue of the consent judgment.

In March 1980 a notice under section 8 of the Land Acquisition Act was issued. The Collector of Land Revenue intimated to the appellants in July 1980 that he required possession of the premises by October 30, 1980. The respondents refused the appellants' request for vacant possession. The appellants then threatened to take out a writ of possession against the respondents, whereupon the respondents initiated the present proceedings in the High Court against the appellants, seeking a declaration that the consent judgment was bad and should be set aside and for an injunction restraining the appellants by themselves or their servants or agents from executing the consent judgment by a writ of possession or alternatively damages for vacating the premises in compliance with the consent judgment. In their defence and counterclaim, the appellants averred that in the District Court proceedings, the appellants claimed against the respondents as trespassers for vacant possession and that the respondents admitted to the claim and consented to judgment and in consequence were estopped from going back on that judgment. In the meanwhile the Collector took possession of the premises in March 1981 under section 16 of the Land Acquisition Act.

The High Court found in favour of the respondents, and the appellants appealed to the Court of Appeal.

Held: dismissing the appeal: (1) the respondents had maintained that they were the tenants of the premises, relying on the tenancy agreement dated April 26, 1952. The letting of the premises to the partnership made all the partners joint tenants. The respondents could not have conceded that they were trespassers;

(2) section 14 of the Control of Rent Act is mandatory and provides that no order or judgment for recovery of possession of any premises within the meaning of the Act and comprised in a tenancy shall be made or given except in the cases set out in Part III of the Act. The consent judgment was not given pursuant to any of the cases set out in Part III of the Act and is a nullity, and no estoppel can arise which would have the effect of overriding the express provisions of the Act.

Cases referred to:

(1) *Nanyang Gum Benjamin Manufacturing (Pte.) Ltd.* v. *Tan Tong Woo & Ors.* [1978] 1 M.L.J. 233.

(2) *Ooi Hoe San* v. *Kim Teng Realty Pte Ltd.* [1983] 1 M.L.J. 366.

(3) *Keen* v. *Holland* [1984] 1 All E.R. 75, 82.

COURT OF APPEAL.

Kirpal Singh for the appellants.
Karuppan Chettiar for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): This is an appeal from a judgment of the High Court given on November 11, 1983 declaring the judgment obtained by the Appellants in the District Court in D.C. Summons No. 4416 of 1978 a nullity and setting it aside and awarding to the Respondent damages agreed at a sum of $50,000/–.

The Appellants are the trustees of the 1898 Alkaff Settlement and were at all material times the owners of the premises No. 123-A and 123-B Market Street, Singapore (the "said premises"). On August 28, 1978 the Appellants initiated proceedings in the District Court in D.C. Summons No. 4416 of 1978, claiming that:

(i) The said premises were let to one A.A. Mohamed Maideen s/o A.M. Abdullah Sahib on a monthly tenancy and that the said A.A. Mohamed Maideen carried on business on the said premises as A.M. Abdullah Sahib & Co.

(ii) In June 1978 the Appellants learnt that the said A.A. Mohamed Maideen was no longer the proprietor or a partner of the firm of A.M. Abdullah Sahib & Co. which were in occupation of the said premises.

(iii) By a letter dated June 28, 1978 to the Respondents the Appellants enquired of the whereabouts of the said A.A. Mohamed Maideen but did not receive a reply.

(iv) Upon investigation the Appellants discovered that the said A.A. Mohamed Maideen died in 1959.

(v) By a notice to quit dated June 28, 1978 served on the Honourable the Chief Justice of Singapore the tenancy in the name of the said A.A. Mohamed Maideen was terminated on August 3, 1978.

(vi) The Appellants claimed that the tenancy of the said premises had been duly determined and the occupation of the said premises by the Respondents were that of trespassers and unlawful, and claimed possession thereof.

By their defence delivered on December 6, 1978 the Respondents pleaded that they were the lawful tenants of the said premises and invoked the protection of the Control of Rent Act (Cap. 266). It is common ground that the said premises were premises within the meaning of the said Act.

Subsequently the Appellants and the Respondents came to a settlement and by consent judgment was entered against the Respondents on December 18, 1979 on certain terms, which include delivery by the Respondents of possession of the said premises to the Appellants and a stay of execution on the judgment until certain events occurring, and one such event was the compulsory acquisition of the said premises by government. Thereafter, by virtue of the terms of the said judgment (the "consent judgment"), the Respondent remained in possession of the said premises.

On March 28, 1980 a notice under section 8 of the Land Acquisition Act (Cap. 272) was issued for the acquisition of, *inter alia,* the said premises. In accordance with the said Act the Appellants lodged a claim for compensation which was made on the basis that vacant possession thereof would be given. The Collector of Land Revenue intimated to the Appellants in July 1980 that he required possession of the said premises by October 30, 1980: see page 65 of the Record of Appeal. Consequently, the Appellants requested the Respondents to deliver vacant possession of the said premises which the Respondents refused. The Appellants threatened to take out a writ of possession by way of execution whereupon the Respondents initiated proceedings in Suit No. 2881 of 1980 in the High Court against the Appellants claiming for a declaration that the consent judgment was bad and should be set aside, and for an injunction restraining the Appellants by themselves or their servants or agents from executing the consent judgment by a writ of possession or alternatively damages for vacating the said premises in compliance with the consent judgment. In their defence and counterclaim the Appellants averred that in the proceedings in D.C. Summons No. 4416 of 1978 the Appellants claimed against the Respondents as trespassers for vacant possession and that the Respondents admitted to the claim and consented to judgment and in consequence were estopped from going back on that judgment.

In the meanwhile, acting under the powers conferred under section 16 of the Land Acquisition Act, the Collector of Land Revenue took possession of the said premises on March 2, 1981 and completed the acquisition of the said premises.

At the conclusion of the hearing in the High Court the learned trial Judge held that he was bound by the decision of the Court of Appeal in *Nanyang Gum Benjamin Manufacturing (Pte) Ltd.* v. *Tan Tong Woo & Ors.*[1] and gave judgment in favour of the Respondents. Against that judgment the Appellants appealed to this court, which appeal was dismissed with costs to the Respondents.

Before us Mr. Kirpal Singh sought to distinguish the instant case from the *Nanyang Gum Benjamin's case (supra).* In that case it was a claim by a landlord against a tenant and the issue before the court was whether or not the premises in question were premises subject to the Control of Rent Act. In the instant case, the Appellants claimed for possession of the said premises and the claim according to Mr. Kirpal Singh was made on the basis that the Respondents were trespassers unlawfully in occupation of the said premises, and therefore the *Nanyang Gum Benjamin's case (supra)* has no application. Mr. Kirpal Singh further argued that in consenting to the judgment the Respondents admitted that they were trespassers and on this point he relied heavily on the presence of the words, "Upon the Defendants admitting the claim of the Plaintiffs", in the consent judgment.

We are unable to accept Mr. Kirpal Singh's arguments. It is true that in the statement of claim in D.C. Summons No. 4416 of 1978 the Appellants alleged that the Respondents were trespassers unlawfully in occupation of the said premises, but that allegation was denied by the Respondents in their defence, and clearly the issue before the court was whether or not they were tenants of the said premises and if they were, they would be entitled to protection under the said Act. In principle we do not see how this case can be distinguished from *Nanyang Gum Benjamin's case (supra).*

The words relied upon by Mr. Kirpal Singh in the consent judgment do not really assist him at

all. Such words are quite often found in a consent judgment in Singapore, and cannot be construed as an admission on the part of the Respondents that they were trespassers unlawfully in occupation of the said premises. At most they amount to an admission of only the claim for possession by the Appellants and such an admission has no effect at all in a consent judgment for possession of premises which are subject to the Control of Rent Act.

In fact, at all times before the learned District Judge, the Respondents had maintained that they were the tenants of the premises, relying on the tenancy agreement dated April 26, 1952. At the request of the Appellants' solicitors, the Respondents provided the names of all the partners of their firm. According to the records, the first partner, N.M. Mohd Abdullah, has been a partner since 1938 and was a partner of the Respondent firm when the matter came up before the learned District Judge. The letting to the partnership made all the partners joint tenants: see *Ooi Hoe San* v. *Kim Teng Realty Pte. Ltd.*[2] In the circumstances, we could not see how the Respondents could have conceded that they were mere trespassers.

Mr. Kirpal Singh further relied on the fact that the consent judgment was entered on December 18, 1979 and the Respondents had been quite content to accept it and remained in possession of the said premises. No action was taken by them until September 17, 1980 when they took out the writ in the present proceedings against the Appellants. On that basis Mr. Kirpal Singh contended that the Respondents were estopped from going back on the consent judgment or asserting that the consent judgment was a nullity. In our judgment no such estoppel can arise against the Respondents. Section 14 of the Control of Rent Act is mandatory and provides that no order or judgment for recovery of possession of any premises within the meaning of the Act and comprised in a tenancy shall be made or given except in the cases set out in Part III of the Act. The consent judgment was not given pursuant to any of the cases set out in Part III of the Act and is a nullity, and no estoppel can arise which would have the effect of overriding the express provisions of the Act: see the judgment of Oliver, L.J. in *Keen* v. *Holland*[3]. Accordingly, this argument of Mr. Kirpal Singh also failed.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Murphy & Dumbar.*

CHAI CHEW HENG v. CHUNG SU CHON & ANOR.

[O.C.J. (Kulasekaram J.) June 14, 1984]
[Singapore – Suit No. 3396 of 1979]

Tort – Negligence – Vicarious liability of PSA – Exempt from liability – Whether liability transferrable – Damages – Port of Singapore Authority Act (Cap. 173), s. 97B – Singapore Port Regulations, 1977, regs. 83(1) & (2).

The plaintiff was employed by a company to drive their lorry No. JA 6566. The 1st defendant was the employee or servant of the 2nd defendant, the Port of Singapore Authority ("PSA"). On September 19, 1978, the plaintiff was directed by his employers to deliver a lorry load of plywood in bundles for storage pending shipment. The plaintiff's employers had booked a forklift with its driver from the PSA to unload the plywood at its premises. When the 1st defendant had unloaded three bundles from the lorry and had stacked them one on top of the other and after the forklift had moved back a little distance away from the stack consisting of the three bundles the plaintiff walked up to place a piece of wood on the floor close to the stack to assist the 1st defendant to place a fourth bundle on the top of the three bundles of the stack. While he was placing the piece of wood on the floor in front of the stack the top bundle from the stack became unstable and tumbled down hitting the plaintiff on his right hand and arm, and the right leg and foot though he tried to move away from the falling bundle. As a result of this incident the plaintiff suffered some injuries.

The plaintiff claimed damages for injuries and loss against the 1st defendant for negligence and the PSA as the master of the 1st defendant. The plaintiff entered interlocutory judgment by default of appearance against the 1st defendant and contended that the PSA was liable as the 1st defendant's negligence was not in dispute.

The PSA pleaded contributory negligence on the part of the plaintiff for putting a piece of wood at the bottom of the stack of plywood thereby causing it to fall. It also contended that as the forklift and the services of the 1st defendant were hired out to the plaintiff's employers or the exporter of the goods in question, the PSA is exempt from liability for the plaintiff's claim, having regard to regulation 83(2) of the Singapore Port Regulations, 1977.

Held: (1) regulation 83(2) is not on similar terms as section 97B of the Port of Singapore Authority Act as amended in 1971 and does not exclude the common law liability of the PSA for the plaintiff's claim, nor does it transfer any part of it on to the shoulders of the hirers of the services of the forklift and its driver who are the employers of the plaintiff or the exporter of the goods in question.

(2) regulation 83(1) makes it quite clear that the liability of the PSA is not transferred to the hirer but the hirer is required thereunder to indemnify the PSA against any such claim like the one preferred by the plaintiff.

(3) in the result the PSA is liable to the plaintiff for 50% of the damages to be assessed, with costs.